



POLICE DEPARTMENT

February 7, 2020

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Bart Glowa :

Tax Registry No. 963047 :

Manhattan Court Section :

Case No.

2017-18159

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Beth Douglas, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Probationary Police Officer Bart Glowa, while assigned to the 30th Precinct, on or about August 11, 2017, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department to wit: said Probationary Police Officer did steal an item from King Kullen Supermarket without permission or authority.

P.G. 203-10, Pg. 1, para. 5

**PUBLIC CONTACT-
PROHIBITED CONDUCT**

2. Said Probationary Police Officer Bart Glowa, while assigned to the 30th Precinct, on or about August 11, 2017, after being involved in an off-duty incident, did fail and neglect to notify the Operations Unit, as required.

P.G. 212-32, Pg. 1, para. 2, Note

**OFF-DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE**

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 18, 2019 Respondent, through his counsel, entered a plea of Guilty to Specification 2 and Not Guilty to Specification 1. The Department called Ramazan Batuk as a witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Not Guilty of Specification 1 and Guilty of Specification 2. I recommend a penalty of the loss of seven (7) vacation days.

ANALYSIS

In this case, it is undisputed that on August 11, 2017, Respondent was a probationary police officer, having graduated from the academy on June 29, 2017. He was assigned to the 30 precinct and was working exclusively midnight tours. On August 11, 2017, Respondent went into the King Kullen store in [REDACTED]. As he walked around the store, he picked up a bag and placed some broccoli in it. He also took a can of coconut water. At a Burt's Bees

display, Respondent took a lotion from the display. Respondent put the lotion in his pocket. Respondent went to the cashier and paid for the broccoli and the coconut water, but not the lotion. He was leaving the store with the lotion still in his pocket when he was stopped by the store security guard. He signed a trespass affidavit agreeing not to enter any King Kullen stores. (Dep't Ex. 2) Respondent was not arrested. He did not report the incident to the Operations Unit.

The day after the incident Respondent was placed on modified duty where he remained for five months. Around January 2018, Respondent was restored to full duty and assigned to the 52 precinct where he worked until he was again modified about eight days before this trial.

The Department presented Ramazan Batuk, a loss prevention officer who is employed by SEB Security, as its sole witness. Mr. Batuk has been employed by SEB security since 2008. His training consisted of working with other loss prevention officers for three days. When he works in stores, rather than focusing on an individual's behavior, he watches items that are easy to take or are expensive. (Tr. 18-23)

On August 11, 2017, Mr. Batuk was dressed in plainclothes and was working as a loss prevention officer in the King Kullen store in [REDACTED], where he had worked on previous occasions. At around 4:30 PM, he observed a male (Respondent)¹ looking at what Mr. Batuk described as Burt's Bees lotions. Respondent, who was holding some broccoli and coconut water, took a lotion from the shelf. Mr. Batuk testified that Respondent held the lotion behind the phone he had in his hand. (Tr. 23-26)

Mr. Batuk next observed Respondent go to a second aisle, where he just looked at different items without selecting anything, and then to a third aisle. Mr. Batuk described the third

¹ Mr. Batuk did not make an in court identification of Respondent. The male observed by Mr. Batuk was identified in the store as the Respondent when he presented his driver's license after being stopped by Mr. Batuk.

aisle as having several columns, approximately 18 inches wide, and no security camera coverage. Mr. Batuk positioned himself behind a shelf containing chips, as he was trying to hide from Respondent. While looking in between bags of chips, Mr. Batuk saw Respondent go behind a column while he had the phone, with the lotion placed underneath it, in his right hand. Mr. Batuk testified that he then saw Respondent look up and down the aisle, put the phone and lotion into his right pocket, take the phone back out, and "double check" by putting his hand in his pocket a second time and pushing the lotion down in his pocket. (Tr. 25-35, 81)

Mr. Batuk watched as Respondent then walked to the registers where he paid for the broccoli and coconut water. He testified that Respondent did not take the lotion out of his pocket. After Respondent left the register, he passed the first exit door and was in the vestibule before the second exit door when Mr. Batuk stopped him. Mr. Batuk testified that Respondent was under his constant observation from the moment he was near the lotion to the time he stopped him at the exit. (Tr. 27-36, 41, 77, 80-81)

After Mr. Batuk stopped Respondent, he told him he worked for store security and that Respondent had forgotten to pay for the item in his right side pocket. He described Respondent as being, "a little shocked," but did not remember the details of their conversation. Mr. Batuk told Respondent he had to go to the loss prevention office. Respondent said he wanted to pay for the item, but Mr. Batuk explained that it didn't work that way so Respondent went to the office with Mr. Batuk. (Tr. 36-37)

While in the office, Mr. Batuk learned that Respondent worked for the Department. Mr. Batuk also determined that the item taken by Respondent cost \$8.99. Respondent, who did not give Mr. Batuk a hard time, signed a form indicating that if he ever returned to any King Kullen

store, he would be arrested for trespassing. The store did not notify the police or have Respondent arrested. (Tr. 36-41, Dep't Exs. 2, 4)

Respondent testified that as of the end of June 2017, he had been working midnight tours at the 30 precinct and was having trouble adjusting his sleep patterns. As such, he was getting only scattered sleep at the time. On August 11, 2017, he went to the King Kullen store where he normally shops to purchase a few items of food. (Tr. 102-03) He first put some broccoli in a bag and then grabbed a can of coconut water. He was just looking around the store when he saw a stand with different lotions. He took one of the lotions off the display with his right hand in which he was holding his cell phone. He then put the lotion and his phone into his right pocket. Respondent testified that he did this because, "My hands were busy with the items and I was afraid they might fall out or something. So I just wanted to make sure that doesn't happen. I didn't have a cart." (Tr. 104-07)

Respondent further testified that when he got to the checkout line, he forgot to take the lotion out of his pocket. When he was stopped by the loss prevention officer, he was surprised and then realized he still had the lotion in his pocket. He told the loss prevention officer that it was a mistake and that he wanted to purchase the product. (Tr. 107-08)

After he was taken to the store office, Respondent produced his driver's license for identification and signed the trespass affidavit. He did not read the affidavit, but understood it to be an administrative form because the store personnel never said to him that he stole anything. Respondent admitted he did not report the incident to either the Operations Unit or to Internal Affairs. He testified he didn't report it because, "I knew inside my heart I had no malicious intent," and he did not feel like he did anything wrong. (Tr. 108-11) Respondent asserted at trial that he never intended to steal any items from King Kullen. (Tr. 114)

Respondent was interviewed by IAB twice. The first time he told IAB that he was distracted in the store because he was talking on his phone. He admitted this was not an accurate statement and noted that he corrected it during his second IAB interview. He stated that he misunderstood the question in his first IAB interview and thought IAB was initially asking him if he spoke to anyone about the incident rather than during the incident. (Tr. 113-14, 130)

As Respondent has admitted he failed to properly notify the Department of this incident and has pled Guilty to Specification 2, I accept his plea and find him Guilty of Specification 2.

Specification 1, while not citing to any specific penal code section, charges Respondent with "stealing" an item. Under New York State law, Penal Code Section 155.05 (1), "A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof."

Respondent has admitted he took the item and left the store without paying for it. His defense is that this was an unintentional action and he is therefore not guilty of stealing the item. In support of this defense, Respondent unequivocally testified that he did not intend to steal the item. The defense also argued that the burden of proving the specification is on the Department and that testimony presented by the Department's witness, Mr. Batuk, was not sufficient for the Department to meet its burden.

Conversely, the Department argued that Respondent's taking of the item was an intentional act, which was proven by Mr. Batuk's testimony regarding Respondent's stealthy actions surrounding how he placed the item in his pocket. The issue the court must decide in this

case is whether the Department has proven by a preponderance of the evidence that Respondent intentionally took the item from the store without paying for it.

While there is video evidence in this case which consists of clips showing Respondent at various locations in the King Kullen (near the lotion display, in a freezer aisle, at the checkout, exiting the store), there are no clips showing Respondent placing the lotion in his pocket or even selecting it from the display. The video clips, which are not particularly clear at any point, do show that Respondent, at various points, had items in his hands which included a bag, a phone and possibly a can. The court did not find any clip which clearly shows the lotion in Respondent's hands.²

Without video evidence of crucial portions of Respondent's time in the store, the court next must examine the testimony of Mr. Batuk. I find that Mr. Batuk's testimony was less than credible in several ways. First of all, his statement that he had Respondent under observation 100% of the time after Respondent took the lotion off the display is not credible. On cross-examination, it was brought out that Mr. Batuk could not have been watching Respondent all the time as Mr. Batuk had to raise his eye level several times to see above displays and that he also briefly took his eyes off Respondent when he moved to a different aisle to get a better viewing angle. (Tr. 74-76) Mr. Batuk, by inaccurately testifying that he was observing Respondent 100% of the time, showed that he is someone willing to portray his observational abilities as better than they actually were. This undermines his level of certainty with his other observations.

² It should be noted that the Department never introduced any evidence concerning the specific size, dimensions or packaging of the lotion, nor any specifics about what kind of lotion it was. The receipt indicates it was for a "Mama Bee" item. (Dep't Ex. 4)

It is also less than credible to the court that when Respondent was in aisle three, Mr. Batuk, while trying to avoid being seen by the Respondent, could purportedly see through bags of chips and around more than one column to be able to observe all the details he described, such as seeing Respondent pushing the lotion down further into his pocket. (Tr. 80-82) Mr. Batuk also described Respondent as making suspicious movements, such as looking all around before putting the lotion in his pocket. In addition to there being no video clips to support Mr. Batuk's testimony about this particular portion of time, the clips that do exist show no evidence of Respondent looking around, or checking for people watching him, at any other time he was in the store, even while he was at the lotion display where he initially took the item.

It is also notable that at one point, Mr. Batuk acknowledged he could not remember how many columns were between him and Respondent nor where the columns were placed. Mr. Batuk testified that the incident happened two years ago and agreed that memory is affected by the passage of two years' time. (Tr. 86-87) This failure to be able to accurately describe the layout of the area where he claims to have seen all of Respondent's furtive movements raises serious questions as to the credibility of his recollection of this crucial portion of the incident.

There is also some reason to doubt Mr. Batuk's description of Respondent pulling his phone back out of his pocket after putting it in there on top of the lotion. Again while the video is not clear, nor is it dispositive since there was some time between Respondent's presence in aisle three and at the checkout, it does not appear on the video that Respondent had the phone in his right hand as he checked out. It appears that he just had something in his hand that he threw

out as he was leaving the store. (See Dep't. Ex. 1- Video, (PO Glowa, at cashier 2) at .58 to 1.02)³

In conclusion, I find that the Department has not met its burden of proving that Respondent stole the lotion from King Kullen. Respondent denied he intended to steal and his testimony does not shift the burden away from the Department to prove its case.⁴ The testimony of the Department witness, Mr. Batuk, was not convincing that Respondent behaved in a manner that would indicate he had the requisite intent to take the lotion without paying for it. The video did not provide any evidence in support of proving that the taking of the lotion was an intentional act.

In fact, the behavior of Respondent that was visible in the video clips showed no behaviors suggestive of suspicious motives and provides no reason to doubt Respondent's explanation that he simply forgot the lotion was in his pocket when he checked out. Respondent is not seen looking around to see if anyone is watching him at any point in the video clips, nor can he be seen looking for any surveillance cameras. It seems more likely that a shoplifter would

³ It is notable that the Department, while asking Respondent to confirm that he heard Mr. Batuk testify that he saw Respondent remove his phone after he put the lotion in his pocket, never subsequently asked Respondent if he in fact did that.

⁴ It is unfortunate that the Department, in a case where it is requesting the termination of a member of service, failed to provide the court with some very basic information relevant to proving a charge of stealing. The record contains no specific details about the size and dimensions of the lotion or of Respondent's pants pocket. The court was not provided a photo of the product. All of this might have been informative on questions as to whether the item could have been easily held in a hand, whether it would have fit in Respondent's pocket with a phone and whether it would have been noticeable in Respondent's pocket. Respondent was not questioned on how he paid for the other items which might have led to information on what kind of pockets he had in his clothing and where he obtained the payment from and whether he would have gone into the same pocket where the lotion was at any point during checkout. He also was not questioned on cross as to where his phone was at the time of checkout or at all other times while he was in the store. Instead, Respondent was cross-examined on this point only as to whether he had heard Mr. Batuk's description of how he allegedly had put the lotion in his pocket behind his cell phone and later removed the phone. Respondent confirmed hearing this testimony, but was not asked about his own recollection.

The Department also could have provided the court with a diagram and still photos of the area where Mr. Batuk claims to have been standing when he saw Respondent in aisle 3. This could possibly have allowed the court to give more credibility to Mr. Batuk's claims about what he was able to observe.

be checking to see if there were surveillance cameras or whether anyone was observing him inside the store both before and after he took an item to steal. Respondent can also be observed checking out the lotion area in a manner indicating he is taking time in selecting a product. He is not just grabbing something to steal. The behaviors of browsing and being selective about an item seem less likely to be behaviors of a person shoplifting an item. Respondent also does not just take the item and attempt to leave the store as quickly as possible, which might also be behavior more indicative of someone shoplifting an item. Instead of getting away with a theft as soon as possible, Respondent continued to look at other items in the store.

I also do not find the fact that Respondent signed the notice of trespass proves intent to steal on the part of Respondent. The notice does not contain any admission of theft nor any details of the incident in question.

Based on the Department's failure to prove their case by a preponderance of the evidence, I find the Respondent Not Guilty of Specification 1.

PENALTY

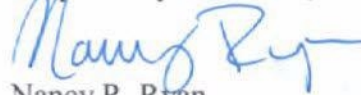
In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 4, 2017. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled Guilty to failing to properly report the incident at King Kullen. His explanation for not reporting the incident, while in violation of Patrol Guide Section 212-32, Page 1, Para 2 Note, could be seen to be partially based on his not having been arrested, but

merely detained. I also note that Respondent was on full duty status in a precinct for almost two years following this incident and has no disciplinary record during that time period.

In a case where a Respondent was found Not Guilty of shoplifting, but Guilty of failure to report an incident where she was detained in a store security office for a period of time, a penalty of the loss of seven (7) days previously served on suspension was imposed. *See Disciplinary Case No. 2013-10728* (July 27, 2015). In line with that precedent, I recommend Respondent forfeit seven (7) vacation days for his failure to adhere to the reporting requirements.

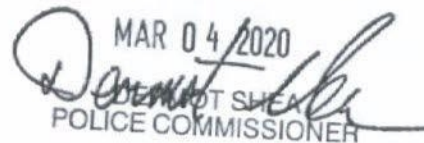
Respectfully submitted,



Nancy R. Ryan

Assistant Deputy Commissioner Trials

APPROVED

MAR 04 2020

DANIEL J. SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER BART GLOWA
TAX REGISTRY NO. 963047
DISCIPLINARY CASE NO. 2017-18159

Respondent was appointed to the Department on January 4, 2017. On his most recent performance evaluations, he received a 3.5 overall rating of "Highly Competent/Competent" in 2018, and a 3.0 rating of "Competent" in 2017. [REDACTED]

Respondent has no disciplinary history.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials